



A BILL FOR AN ORDINANCE

RELATING TO SIDEWALKS AND MALLS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Council Findings and Purpose. The purpose of this ordinance is to address actions relating to structures, including tents, on public sidewalks and malls.

The Council finds that the primary purpose of the public sidewalks and malls in the City and County of Honolulu is to provide for the safe and convenient passage of pedestrians and persons in wheel chairs or strollers. The Council finds that recently a number of persons have set up tents on the public sidewalks of the City, creating an unsanitary environment on and in the vicinity of these sidewalks, and seriously impeding the safe and convenient passage of those for whose benefit the sidewalks have primarily been set aside. Occupants of these tents, often within inches of busy streets, are also putting themselves in harm's way.

It is the Council's intent that the amendments herein will complement any other statutes or ordinances relating to unauthorized structures on City sidewalks and malls.

SECTION 2. Section 29-1.1, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a definition of "tent" to be inserted in its proper alphabetical order by the revisor of ordinances and to read as follows:

""Tent" means any collapsible structure capable of providing human shelter and consisting of material attached to or draped over a pole or poles, a frame, or a supporting rope, wire or cable. The term does not include: (i) any shelter constructed by or under the authority of the city, the State of Hawaii or the federal government; (ii) any stroller for children; or (ii) any umbrella or other protection from the elements that is worn by or held up by a person."

SECTION 3. Section 29-8.1, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"Sec. 29-8.1 Permit required.

- (a) No person shall establish, construct, erect, maintain, keep or operate a newsstand, public telephone enclosure, curbside teller, freight elevator, freight chute or any other appliance or structure [or appliance], including any tent, on, above or below a public sidewalk or mall without a permit as provided [herein,] in this article or as may be provided by law.



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- (b) No person shall affix any appliance or structure to a public sidewalk unless a permit has been issued for the establishment, construction, erection or maintenance of the appliance or structure at its location. Without limiting the generality of the foregoing, the insertion of a tent pole, stake or peg into the public sidewalk shall be deemed an act of affixing the tent to the sidewalk. The mere placement of an appliance or structure on a public sidewalk shall not be deemed affixing the appliance or structure to the sidewalk.
- (c) No person shall occupy any tent on a public sidewalk or mall, unless a permit has been issued for the establishment, construction, erection or maintenance of the tent at its location."

SECTION 4. Section 29-8.6, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"Sec. 29-8.6 Public convenience and necessity.

The permits provided [herein] in this article shall be issued subject to a finding by the director of [finance,] the department of budget and fiscal services or other department designated by the mayor to implement this article, upon evidence submitted by the applicant, that the public convenience and necessity require the issuance thereof."

SECTION 5. Section 29-8.11, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"Sec. 29-8.11 Violation--Penalty.

Any person [establishing, constructing, maintaining, keeping or operating a newsstand, public telephone enclosure, curbside teller, freight elevator, freight chute or any other structure or appliance on, above or below a public sidewalk or mall without a valid permit as provided herein,] violating subsection (a), (b) or (c) of Section 29-8.1 or the terms of any permit issued under this article shall upon conviction be deemed guilty of a misdemeanor and punished by a fine not exceeding \$1,000.00 or by imprisonment not exceeding one year, or by both."

SECTION 6. Chapter 29, Article 8, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new section to be designated by the revisor of ordinances and to read as follows:



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"Sec. 29-8. Rules.

The director of the department of budget and fiscal services and the director of any other department designated by the mayor to implement this article or any provisions thereof may adopt rules, having the force and effect of law, for the implementation and enforcement of this article."

SECTION 7. The title of Chapter 29, Article 9, Revised Ordinances of Honolulu 1990, as amended, is amended to read as follows:

"Article 9. [Procedure on Arrest] Enforcement"

SECTION 8. Chapter 29, Article 9, Revised Ordinances of Honolulu 1990, as amended, is amended by adding a new section to be designated by the Revisor of Ordinances and to read as follows:

"Sec. 29-9. Arrests for tent-related violations.

- (a) When an arrest is made or citation issued for a violation of Section 29-8.1(a), (b) or (c) for the establishment, construction, erection, maintenance, keeping, operating, or occupying of a tent or for affixing a tent to a public sidewalk, the officer may take the tent and, to the extent permitted by law, any of its contents, into custody as evidence of the violation.
- (b) In the case of an arrest for such violation, the officer making the arrest shall first allow the person arrested, or any other owner or occupant of the tent present, a reasonable opportunity to remove from the tent all items of personal property that have not been taken into custody as evidence, subject to the usual limitations on personal items allowed to be held by arrested persons.
- (c) In the case of either arrest or citation, all items within the tent neither taken into evidence nor taken with the arrestee shall be subject to impoundment and subsequent repossession pursuant to Article 19, notwithstanding the fact that 24 hours may not have elapsed from the time of notice to the time of impoundment, and in the case of such impoundment, the officer shall provide the arrestee with the notice required by subsection 29-19.4(a), except subdivisions (3) and (5) thereof."



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SECTION 9. Ordinance material to be deleted is bracketed and new ordinance material is underscored. When revising, compiling or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the revisor of ordinances need not include the underscoring, the brackets, or the bracketed material.

SECTION 10. This ordinance shall take effect upon its approval.

INTRODUCED BY:

[Signature]

DATE OF INTRODUCTION:

FEB 6 2013

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu

FILED
FEB 6 2015
PURSUANT TO ROH Sec. 1-2.4